

PLAINTIFF/PETITIONER: Edmundo Baquiring, et al.
 DEFENDANT/RESPONDENT: California Sierra Express, Inc., et al.

CASE NUMBER:
 RG21106254

**PROOF OF SERVICE BY FIRST-CLASS MAIL
 NOTICE OF ENTRY OF JUDGMENT OR ORDER**

(NOTE: You cannot serve the Notice of Entry of Judgment or Order if you are a party in the action. The person who served the notice must complete this proof of service.)

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (*specify*):

2. I served a copy of the *Notice of Entry of Judgment or Order* by enclosing it in a sealed envelope with postage fully prepaid and (*check one*):

- a. ☐ deposited the sealed envelope with the United States Postal Service.
 b. ☐ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Entry of Judgment or Order* was mailed:

- a. on (*date*):
 b. from (*city and state*):

4. The envelope was addressed and mailed as follows:

a. Name of person served:

Street address:

City:

State and zip code:

c. Name of person served:

Street address:

City:

State and zip code:

b. Name of person served:

Street address:

City:

State and zip code:

d. Name of person served:

Street address:

City:

State and zip code:

☐ Names and addresses of additional persons served are attached. (*You may use form POS-030(P).*)

5. Number of pages attached _____.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

 (TYPE OR PRINT NAME OF DECLARANT)

_____
 (SIGNATURE OF DECLARANT)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Alameda Superior Court / RCD

Edmundo Baquiring et al
Plaintiff/Petitioner(s)
VS.
California Sierra Express, Inc. et al
Defendant/Respondent(s)

No. RG21106254

Date: 07/14/2023

Time: 9:00 AM

Dept: 21

Judge: Evelio Grillo

ORDER re: Hearing on Motion for Order
FINAL APPROVAL OF
SETTLEMENT; Case
Management Conference

The Motion for Final Approval of Settlement filed by Edmundo Baquiring, individually and on behalf of all others similarly situated on 06/21/2023 is Granted in Part.

The motion of plaintiffs for final approval of class action settlement and PAGA settlement is GRANTED.

APPROVAL OF THE SETTLEMENT

The complaint alleges various Labor Code claims. There are approximately 598 members of the class.

The case preliminarily settled for a total of \$425,000.

The settlement agreement states there will be attorneys' fees of up to \$141,666 (33%), costs of up to \$25,000, service awards of \$7,500 to plaintiff, settlement administration costs of up to \$10,000, and a net PAGA payment of \$42,500. After these expenses, the amount available to be distributed to the Class would be \$209,000. Assuming that there are an estimated 598 Class Members, the average payment per Class Member would be \$351.

The proposed class notice form and procedure are adequate. There were 0 objections and 1 request for exclusion.

The proposed class is appropriate for class certification.

The scope of the class release is appropriate. (Agt para III.1) The scope of the class release must be limited to the claims arising out of the claims in the complaint where the named plaintiffs are typical and can adequately represent the class. The release of claims by the class is limited by the "factual predicate rule." (Hesse v. Sprint Corp. (9th Cir. 2010) 598 F.3d 581, 590.) (See also Hendricks v. Starkist Co (N.D. Cal. 2016) 2016 WL 692739 at * 2-4 [Denying motion for final

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

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approval of class settlement because scope of release overbroad].)

The scope of the PAGA release is appropriate. (Agt para III.2) The agreement releases the claims of the LWDA.

The scope of the named plaintiff release is appropriate. The agreement for the named plaintiff may include a Civil Code 1542 waiver. (Agt para III.3.) The agreement for the named plaintiff may release "individual PAGA claims."

The Court notes and approves of the plan to distribute the settlement funds with no claims process.

The unclaimed funds will be distributed to Legal Aid at Work. (Agt, para III.12.) This is consistent with CCP 384. Counsel has provided a declaration in support of the motion that provides the information required by CCP 382.4.

APPROVAL OF FEES, COSTS, AND SERVICE AWARD

"Because absent class members are not directly involved in the proceedings, oversight to ensure settlements are fair and untainted by conflict is the responsibility of both the class representative and the court." (Mark v. Spencer (2008) 166 Cal.App.4th 219, 227.)

"In any class action there is always the temptation for the attorney for the class to recommend settlement on terms less favorable to his clients because a large fee is part of the bargain. ... [T]horough judicial review of fee applications is required in all class action settlements and the fairness of the fees must be assessed independently of determining the fairness of the substantive settlement terms.' ... " 'The evil feared in some settlements-unscrupulous attorneys negotiating large attorney's fees at the expense of an inadequate settlement for the client-can best be met by a careful ... judge, sensitive to the problem, properly evaluating the adequacy of the settlement for the class and determining and setting a reasonable attorney's fee....' " (Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 555-556.)

The court starts with its benchmark, then cross-checks with the lodestar, and makes adjustments if the benchmark is significantly different from the lodestar. (Laffitte v. Robert Half Internat. Inc. (2016) 1 Cal.5th 480, 505 ["If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted"].)

The Ninth Circuit's benchmark is 25%. (Laffitte v. Robert Half Internat. Inc. (2016) 1 Cal.5th 480, 495.)

When using the percentage of recovery approach, this court's benchmark for fees is 30% of a total fund. Courts have benchmarks ranging from 25% to 33%. Laffitte v. Robert Half Internat. Inc. (2016) 1 Cal.5th 480, 495; Schulz v. Jeppesen Sanderson, Inc. (2018) 27 Cal.App.5th 1167, 1175; Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 557 fn 13; Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 fn 11; Schulz v. Jeppesen Sanderson, Inc. (2018) 27 Cal.App.5th 1167, 1175.)

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The court recently reviewed and reaffirmed its use of a benchmark of 30%. (*Hurtubise v. Sutter East Bay Hosp.* (2021) 2021 WL 11134912.)

The benchmark of 30% suggests fees of \$127,500.

When cross-checking with the lodestar/multiplier, the court will evaluate the lodestar based on reasonable fees that would have been charged at hourly rates and then apply a multiplier. The multiplier includes contingent fee risk and other factors.

Counsel at assert they spent 217.10 hours on the case. The court finds that this is reasonable.

The court finds that a blended rate of \$600 is appropriate for the case. (*Meridian Financial Services, Inc. v. Phan* (2021) 67 Cal.App.5th 657, 708-709 [blended rate of \$550]; *Espejo v. Copley Press, Inc.* (2017) 13 Cal.App.5th 329, 337 [blended rate of \$500/hour]; *569 East County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.App.5th 426, 438-440 fn 14, fn 16 [blended rate of \$275].) Regarding the amount of the blended rate, the court considers the evidence and its own knowledge and familiarity with the legal market. (*Meridian Financial Services, Inc. v. Phan* (2021) 67 Cal.App.5th 657, 709.) The court takes judicial notice of the rates for counsel in the USAO Fitzpatrick Matrix on “Hourly Rates (\$) for Legal Fees for Complex Federal Litigation in the District of Columbia.” The court takes judicial notice of the Laffey matrix. (<http://www.laffeymatrix.com/>) The court gives little weight to the anecdotal fee awards of other trial judges. Counsel can selectively present fee awards that indicate the highest hourly billing rates.

The court recently reviewed and reaffirmed its use of a blended rate of \$550. (*Harris v. Southern New Hampshire University* (2023) 2023 WL 3605289.)

The court will use a blended rate of \$600 per hour.

This results in a lodestar of \$130,260.

The court applies a 1.2 multiplier for risk. When considering risk, the court considers there is less risk in a case with fee shifting statutes because counsel's potential fees are not limited by and coupled to the monetary recovery. With a fee shifting statute, counsel has the risk of proving liability but if counsel proves liability, then the fees shift to the defendant with little to no consideration of the amount of the client’s monetary recovery. (*Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1174.) For example, a nominal damage recovery will result in counsel recovering “reasonable attorneys’ fees” that could far exceed the award of damages. (*Harman v. City and County of San Francisco* (2007) 158 Cal.App.4th 407, 419 [jury awarded plaintiff \$30,300, counsel recovered \$1,113,905.40 in fee-shifted fees]; *Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1006-1007 [client recovered \$1, counsel recovered \$87,525 in fee-shifted fees].) There was a fee shifting provision. This results in a multiplier adjusted lodestar of \$156,312.

Considering the percentage analysis fees of \$127,500 and the multiplier adjusted lodestar fees of \$156,312, the court will award fees of \$127,500. This is the court’s benchmark. The benchmark

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is not significantly different from the multiplier adjusted lodestar. (Laffitte, supra.) The award of fees is appropriate to compensate counsel in this case, to incentivize the prosecution of meritorious cases, and does not result in an unreasonable windfall to counsel at the expense of their clients.

The court approves costs of \$ 13,303.16.

The court approves actual settlement administration costs of up to \$10,000.

The court approves a service award of \$7,500 to plaintiff. Plaintiff provided evidence regarding the nature of participation in the action, including a description of specific actions and the amount of time committed to the prosecution of the case. (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 804-807.)

The Court ORDERS that 10% of any fee award to be kept in the administrator's trust fund until the completion of the distribution process and Court approval of a final accounting.

The Court will set a compliance hearing after the completion of the distribution process and the expiration of the time to cash checks for counsel for plaintiff and the Administrator to comply with CCP 384(b) and to submit a summary accounting how the funds have been distributed to the class members and the status of any unresolved issues. If the distribution is completed, the Court will at that time release any hold-back of attorney fees.

Plaintiff may submit a proposed order if necessary. The court will sign any proposed order, which is modified by this order.

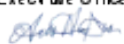
Compliance Hearing Re: Disbursement of Funds is scheduled for 01/19/2024 at 01:30 PM in RCD / Department 21 at Rene C. Davidson Courthouse.

Clerk is directed to serve copies of this order, with proof of service, to counsel and to self-represented parties of record.

Dated: 07/14/2023



Evelio Grillo / Judge

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	FILED Superior Court of California County of Alameda 07/20/2023
PLAINTIFF/PETITIONER: Edmundo Baquiring et al	Chad Finke, Executive Officer / Clerk of the Court By:  Deputy
DEFENDANT/RESPONDENT: California Sierra Express, Inc. et al	A. Hewitt
CERTIFICATE OF MAILING	CASE NUMBER: RG21106254

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the attached document upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Oakland, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dora Velitchkova Lane
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Reno, NV 89511

Gregory Mauro
James Hawkins APLC
9880 Research Drive
Suite 200
Irvine, CA 92618-

James Ross Hawkins
James Hawkins APLC
9880 Research Dr Ste 200
Irvine, CA 92618

Chad Finke, Executive Officer / Clerk of the Court

Dated: 07/20/2023

By:



A. Hewitt, Deputy Clerk

CERTIFICATE OF MAILING

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PROOF OF SERVICE, COUNTY OF ORANGE

I am a resident of the State of California, County of Orange. I am over the age of eighteen years and not a party to the within action. My business address is 9880 Research Drive., Suite 200, Irvine, California 92618.

On July 21, 2023, I served on the interested parties in this action the following document(s) entitled:

NOTICE OF ENTRY OF JUDGMENT OR ORDER

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address Alma@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SERVICE LIST

(Service List Attached)

[XX] **STATE:** I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Executed on July 21, 2023, at Irvine, California

Alma Chavarin
Alma Chavarin

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10 **Via LWDA Website**

Labor and Workforce Development Agency
11 Attn: PAGA Administrator
1515 Clay Street, Suite. 801
12 Oakland, CA 94612
13 <http://www.dir.ca.gov/Private-Attorneys-General-Act>
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